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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 ADVANTAGE CAPITAL  
9 INVESTMENTS, LLC,

10 Plaintiff,

11 v.

12 LOAN DEPOT LENDING COMPANY,  
13 INC.; and NICK SHETH,

14 Defendants.

CASE NO. C13-5387 BHS

ORDER DENYING SECOND  
MOTION FOR DEFAULT  
JUDGMENT AND DISMISSING  
CLAIMS

15 This matter comes before the Court on Plaintiff Advantage Capital Investments,  
16 LLC's ("Advantage") motion for default judgment (Dkt. 15). The Court has considered  
17 the pleadings filed in support of the motion and the remainder of the file and hereby  
18 denies the motion and dismisses Advantage's claims for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On May 22, 2013, Advantage filed a complaint against Defendants Loan Depot  
21 Lending Company and Nick Sheth ("Defendants"). Dkt. 1. Advantage asserts six causes  
22 of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18

1 U.S.C. §§ 1961–1968, a cause of action for fraud, and a cause of action for corporate  
2 alter ego. *Id.* Advantage’s claims are based on the allegation of one act of failure to pay  
3 a commission as set forth in a written agreement. *Id.*, ¶ 22.

4 On August 13, 2013, the Clerk entered an order of default against Defendants.  
5 Dkt. 14. On August 14, 2013, Advantage filed a motion for default judgment. Dkt. 15.  
6 On September 18, 2013, the Court denied Advantage’s motion for lack of evidence in  
7 support of its claims and gave Advantage one month to file a second motion supported by  
8 sufficient evidence. Dkt. 19. The Court stated that failure to file sufficient evidence will  
9 result in dismissal of Advantage’s claims. *Id.* at 3.

10 On November 18, 2013, Advantage filed a second motion for default judgment.  
11 Dkt. 20. In support of that motion, Advantage’s counsel submitted a declaration stating  
12 that he would submit a declaration by Amit Patel within two weeks. Dkt. 21, ¶ 12.  
13 Advantage also requested that the Court take judicial notice of a complaint in another  
14 matter against Defendants. Dkt. 22.

## 15 II. DISCUSSION

16 A district court’s decision whether to enter a default judgment is a discretionary  
17 one. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092–93 (9th Cir. 1980). A court may deny the  
18 entry of judgment based on the merits of a plaintiff’s claims. *Eitel v. McCool*, 782 F.2d  
19 1472 (9th Cir. 1986).

20 In this case, Advantage has failed to submit sufficient evidence in support of its  
21 RICO claim. Under the statute, a  
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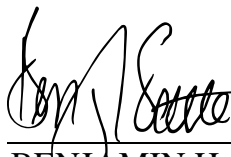
1 “pattern of racketeering activity” requires at least two acts of racketeering  
2 activity, one of which occurred after the effective date of this chapter and  
3 the last of which occurred within ten years (excluding any period of  
imprisonment) after the commission of a prior act of racketeering activity  
....

4 18 U.S.C. § 1961(5). Advantage’s core allegation is Defendants’ failure to pay an agreed  
5 commercial loan commission. Dkt. 1, ¶ 22. Although Advantage is “informed and  
6 believes” that Defendants’ conduct is widespread (*id.*, ¶ 25), Advantage has twice failed  
7 to submit sufficient evidence to support this allegation. As of the date of this order, the  
8 declaration of Mr. Patel was not submitted. Moreover, a complaint is not *evidence* of  
9 racketeering activity.

### 10 III. ORDER

11 Therefore, it is hereby **ORDERED** that Advantage’s second motion for entry of  
12 default judgment (Dkt. 20) is **DENIED**, Advantage’s RICO claim is **DISMISSED** for  
13 lack of evidence, and Advantage’s state law claims are **DISMISSED** for lack of  
14 jurisdiction.

15 Dated this 13th day of January, 2014.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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